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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/830,010	04/23/2004	Sheng-Yu Huang	BHT-3137-42	7641

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TROXELL LAW OFFICE PLLC  
SUITE 1404  
5205 LEESBURG PIKE  
FALLS CHURCH, VA 22041

EXAMINER
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KHATTAR, RAJESH

ART UNIT	PAPER NUMBER
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3693

MAIL DATE	DELIVERY MODE
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01/28/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/830,010	<b>Applicant(s)</b> HUANG, SHENG-YU	
	<b>Examiner</b> RAJESH KHATTAR	<b>Art Unit</b> 3693	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23 April 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☒ Claim(s) 1 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Acknowledgements***

This Office Action is in response to Applicant's communication filed on April 23, 2004. Claims 1-4 are pending in the application.

### ***Claim Objections***

Claim 1 is objected to because of the following informalities:

In claim 1, lines 3, Examiner noted a typographical error. Examiner recommends changing "processing unit is in connection with he input unit" to "processing unit is in connection with the input unit". Appropriate correction is required.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Higgins, US Patent No. 5,270,922 in view of Garcia, US Patent No. 3,598,308 and further in view of Galant, US Patent No. 6,839,686. Higgins discloses a global financial commodity bull/bear positioning device, comprising a processing unit, an input unit, a display unit and a program unit, wherein the processing unit is in connection with the input unit and the display unit, the program unit is installed in the processing unit (Figure 1B, col. 1, lines 9-55) for display market disk on the display unit under the control of the processing unit, *the market disk comprising a disk base and rotating pieces, the disk*

*base being comprised of a raising-up section and a lowering-down section both having circumference on which indexes are marked, each rotating piece being movable mounted to a top face of the disk base and having a positioning section corresponding to the raising-up and lowering-down sections of the disk base to provide indication of bull/bear markets of different period of time, the input unit entering values of the indexes of different time period, whereby the bull/bear market information of different time periods can be combined together and the rotating pieces are mounted on the disk base to allow for correctly handling of timing of selling/buying of financial commodities.*

Higgins fails to specifically disclose *the market disk comprising a disk base and rotating pieces, the disk base being comprised of a raising-up section and a lowering-down section both having circumference on which indexes are marked, each rotating piece being movable mounted to a top face of the disk base and having a positioning section corresponding to the raising-up and lowering-down sections of the disk base to provide indication of bull/bear markets of different period of time.* However, Garcia discloses this limitation (Figure 6; col. 5, lines 24-56). Examiner notes that Garcia discloses a disc base and rotating pieces. Moreover, Examiner notes that the use of raising-up and lowering-down section with indexes marked is clearly an aesthetic design change (see MPEP § 2144.04). The design change that relates to ornamentation only and have no mechanical function cannot be relied upon to patentably distinguish the claimed invention from the prior art. Garcia discloses each rotating piece being movable mounted to a top face of the disk base and having a positioning section.

Therefore, it would have been obvious for a person having ordinary skills in the art at the time the invention was made to modify the disclosure of Higgins to include the disclosure of Garcia. One would have been motivated to do so in order to provide means for calculating market yield on discount bonds as illustrated by Garcia (col. 2, lines 30-35).

Both Higgins and Garcia do not specifically disclose *the input unit entering values of the indexes of different time period, whereby the bull/bear market information of different time periods can be combined together and the rotating pieces are mounted on the disk base to allow for correctly handling of timing of selling/buying of financial commodities*. However, Galant discloses this feature (col. 23, lines 35-43; col. 32, lines 61-col. 33, lines 3). Therefore, it would have been obvious for a person having ordinary skills in the art at the time the invention was made to modify the disclosure of Higgins and Garcia to include the disclosure of Galant. One would have been motivated to do so in order to permit a user to select any of a variety of indices as illustrated by Galant.

Examiner has given little/no patentable weight to the “whereby” clause as it doesn’t limit a claim to a particular structure (MPEP § 2106).

Regarding claim 2, Garcia discloses wherein the rotating pieces each comprise a circular disk of different radius moveably mounted on the top face of the disk base (Figure 6, col. 5, lines 24-56).

Regarding claims 3-4, Examiner notes that the use of K and D numbers of KD indicator and RSI number of RSI indicator is clearly an aesthetic design change (see MPEP § 2144.04). The design change that relates to ornamentation only and have no

mechanical function cannot be relied upon to patentably distinguish the claimed invention from the prior art.

### ***Functional Language and Product Claims***

“Language that suggests or makes optional but does not require steps to be performed or does not limit a claim to a particular structure does not limit the scope of a claim or claim limitation [Emphasis in original.]” MPEP §2106 II C. Functional recitation(s) using the word “for” has been considered but are given little patentable weight because they fail to add any structural limitations and are thereby regarded as intended use language. A recitation of the intended use of the claimed product must result in a structural difference between the claimed product and the prior art in order to patentably distinguish the claimed product from the prior art. If the prior art structure is capable of performing the intended use, then it reads on the claimed limitation. See also MPEP §§ 2114 and 2115. Unless expressly noted otherwise by the Examiner, the claim interpretation principles in this paragraph apply to all examined claims currently pending.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to RAJESH KHATTAR whose telephone number is (571)272-7981. The examiner can normally be reached on Flex schedule.

If attempts to reach the examiner by telephone are unsuccessful, the examiner’s supervisor, James Kramer can be reached on 571-272-6783. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3693

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/James A. Kramer/  
Supervisory Patent Examiner, Art Unit 3693

/R. K./  
Examiner, Art Unit 3693